

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:LN:TL-N-1076-99
JSHargis *JPH*

date: MAR - 1 1999

to: Chief, Examination Division (Southern California)
Attn: Julio Berlonghi E:EAS

from: Southern California District Counsel (Laguna Niguel) CC:WR:SCA:LN

subject: Proper Interpretation of § 3305 of the
Restructuring and Reform Act of 1998,
which added I.R.C. § 6404(g).

This memorandum is in response to your February 16, 1999,
request for assistance regarding the above referenced matter.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUES

1. Whether [REDACTED] is correct when it concludes that the interest suspension period set forth in I.R.C. § 6404(g) begins 18 months after the later of (1) the original due date of the return (without regard to extensions), or (2) the date on which a timely return is filed.

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2. Whether the notice required under I.R.C. § 6404(g) is a statutory notice of deficiency or other less formal notice.

3. What, if any, procedures has the Service provided if interest is erroneously assessed in violation of I.R.C. § 6404(g).

CONCLUSIONS

1. [REDACTED]'s analysis of § 3305 of the Restructuring and Reform Act of 1998 is correct. The interest suspension period set forth in I.R.C. § 6404(g) begins 18 months after the later of (1) the original due date of the return (without regard to extensions), or (2) the date on which a timely return is filed.

2. The notice required by I.R.C. § 6404(g) is not a statutory notice of deficiency. The Service is merely required to provide written notice to the taxpayer that provides, with specificity, the additional liability due from the taxpayer and the reason or basis for that liability.

3. To date, the Service has not promulgated new procedures for abatement of interest in these situations. However, in Highlights of the Restructuring and Reform Act of 1998 (Part 2), Document No. 10851 (Aug. 1998), the Service concluded that it needed to take action to implement procedures to account for this change in the law. The intranet website indicates that the MasterFile programmers have been instructed to take such action.

ANALYSIS

[REDACTED]'s analysis is correct

In your February 16, 1999, request for assistance, you expressed concern about [REDACTED]'s conclusion that, under I.R.C. § 6404(g)(1)(A), interest on a deficiency is suspended 18 months "following the later of (1) the original due date of the return (without regard to extensions), or (2) the date on which a timely return is filed" Specifically, you were concerned that the conclusion was incorrect inasmuch as a "timely" return is always filed on or before the original due date. For the reasons that follow [REDACTED]'s analysis is correct.

Section 6404(g)(1)(A) of the Internal Revenue Code reads, in part, as follows:

In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before

the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) beginning on the later of-

- (i) the date on which the return is filed; or
- (ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

In general, an individual taxpayer is required to file his or her return for a taxable year on or before the 15th day of April following the close of the taxable year. I.R.C. § 6072(a). However, the time for filing a return may be extended if the taxpayer timely files an application for an extension of time to file his or her return. I.R.C. § 6081(a) and the regulations thereunder. Thus, a return filed after the original due date, but pursuant to an extension of time will be timely if it is filed on or before the extended due date. Id.

As stated above, the first sentence of I.R.C. § 6404(g)(1)(A) makes it clear that the relief provided in that section only applies if the taxpayer timely filed a return. Inasmuch as [REDACTED] did not include this sentence in its explanation of the new provision, it needed to include the word "timely" somewhere in its analysis. Removing the word "timely" from the [REDACTED] explanation would imply that the section would apply even if the return was filed late.

A statutory notice of deficiency is not required

Your inquiry had a second question regarding I.R.C. § 6404(g). Specifically, you asked whether the notice required by I.R.C. § 6404(g) to end the interest suspension period is a notice of deficiency. You note that, although the Senate Committee Report specifically mentions a "notice of deficiency" (90-Day letter), the Conference Committee Report merely requires "a notice specifically stating the taxpayer's liability and the basis for the liability", which could be a 30-Day letter or other written notice. The language of the Code section mirrors that of

the Conference Report.

That the Code section language mirrors the Conference Committee Report answers this question. The Conference Committee Report usually explains a later draft of the bill, and, thus, is generally more reliable--especially when it mirrors the language actually enacted. In this case, the example provided by the Conference Committee reports suggests that interest would not be suspended on an additional tax liability if that liability was related to a math error and the Service timely sent a notice of such error to the taxpayer. Accordingly, we believe that the notice requirement in the statute does not necessarily require that a statutory notice of deficiency be sent to the taxpayer. We note, however, that the National Resource Center intranet website indicates that Counsel is to interpret this language further. Inasmuch as this guidance has not been issued to date, we suggest that you contact this office again before assessing interest in any case where you are not relying on a statutory notice of deficiency to terminate the interest suspension period.¹

New procedures for the abatement of erroneously assessed interest

You also requested our assistance in determining the procedures for abating any interest that is assessed for any period in which it should have been suspended under I.R.C. § 6404(g)(1). Specifically, you asked whether, if the interest and penalties are erroneously assessed--in contravention of I.R.C. § 6404(g), Exam should follow established abatement procedures for interest abatement (district function) and penalty abatement (service center function) or whether a correction may be made without a formal approval process.

Although there does not appear to be any specific guidance on the issue, the Service has recommended the following actions:

- a. Submit RIS to automatically suspend any non-exempt interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return, during the suspension period.


¹Please note that I.R.C. § 6404(g) is effective only for tax years ending after July 22, 1998, the date on which the Act was signed by the President. Thus, assuming the individual tax year is a calendar year, the earliest year for which the statute is effective is 1998 and the earliest date on which interest would be suspended is October 15, 2000.

b. Revise IRM procedures and interest programs to reflect the suspension period beginning 18 months after the later of the (1) date a return is timely filed or (2) the due date for the return without extensions, and ending 21 days after the IRS issues the required notice.


See Highlights of the Restructuring and Reform Act of 1998 (Part 2), Document No. 10851, p. 35 (Aug. 1998). Moreover, the intranet website contains information indicating that IRS programmers have been instructed to modify the Master File program to allow for the suspension of interest, etc., in these cases. Thus, it appears that the Service intends to update its computer systems and issue guidance before the effective date of the statute. Nevertheless, this question is purely procedural and may be suitable for forwarding to the National Resource Center (NRC) in accordance with the Chief Operating Officer's November 17, 1998, memorandum concerning NRC procedures.

This advice is being sent to our National Office for post-review under our nondocketed significant advice procedures. In general, we are notified of any changes to our advice with 10 business days. We will notify you of the National Office's comments upon their receipt by this office.

If you have further questions on this matter, we will be glad to assist you. Please contact the undersigned attorney at (949) 360-3463 with your inquiries.


J. SCOTT HARGIS
Attorney

Approved:


RICHARD S. GOLDSTEIN
Assistant District Counsel

Attachments:

Chief Operating Officer's November 17, 1998, memorandum
Highlights of the Restructuring and Reform Act of 1998 (Part 2), Document No. 10851, p. 35